

the United States to act as his agent and representative in connection with any of the provisions of this part.

§ 1048.111 Separability of provisions.

If any provisions of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

PART 1049—MILK IN THE INDIANAPOLIS, INDIANA, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1049 issued under secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

SOURCE: The provisions of this Part 1049 appear at 28 F.R. 5366, May 30, 1963, unless otherwise noted.

DEFINITIONS

§ 1049.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

§ 1049.2 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the United States authorized to exercise the powers and to perform the duties of the Secretary of Agriculture.

§ 1049.3 Department.

"Department" means the United States Department of Agriculture.

§ 1049.4 Person.

"Person" means any individual, partnership, corporation, association, or other business unit.

§ 1049.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members.

§ 1049.6 Marketing area.

"Indianapolis, Indiana, marketing area", hereinafter called "the marketing area", means all of the territory within the boundaries of the counties of Bartholomew, Boone, Brown, Clay, Clinton, Decatur, Delaware, Fayette, Franklin, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Jackson, Johnson, Lawrence, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Owen, Putnam, Randolph, Rush, Shelby, Tippecanoe, Tipton, Union, Vigo, and Wayne, all in the state of Indiana, including territory wholly or partly within such boundaries occupied by government (Municipal, State or Federal) reservations, installations, institutions or other similar establishments.

§ 1049.7 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant directly from the farm of such producer or is caused to be diverted by a handler as producer milk pursuant to § 1049.14. "Producer" shall not include any person with respect to milk which is fully subject to pricing and pooling under another order issued pursuant to the Act.

[29 F.R. 10883, July 30, 1964]

§ 1049.8 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to producer milk diverted for the account of such association pursuant to § 1049.14;

(c) Any person who operates a partially regulated distributing plant; or

(d) A producer-handler, or any person who operates an other order plant. [29 F.R. 10883, July 30, 1964]

§ 1049.9 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

§ 1049.10 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is processed and packaged and from which such product is disposed of during the month on routes in the marketing area.

§ 1049.11 Supply plant.

"Supply plant" means a plant from which Grade A milk, skim milk or cream is shipped during the month to a pool plant.

§ 1049.12 Pool plant.

"Pool plant" means a plant specified in paragraphs (a), (b) or (c) of this section except the plant of a producer-handler or a plant exempt pursuant to § 1049.61: *Provided*, That if a portion of a plant is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which not less than 50 percent of the Grade A milk received at such plant from producers and pool supply plants as defined in paragraph (b) of this section is dis-

posed of during the month on routes and not less than 10 percent of such receipts is disposed of on routes in the marketing area: *Provided*, That a distributing plant which was a pool plant in each of the months of September through May, inclusive, shall continue to be a pool plant in the months of June, July, and August, immediately following if fluid milk products are disposed of from the plant in the marketing area on routes during such month;

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped as fluid milk products to pool plants pursuant to paragraph (a) of this section: *Provided*, That a pool plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall be a pool plant for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to be designated a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify as a pool plant: *And provided further*, That shipments to a plant described in the proviso in paragraph (a) of this section during the months of June, July and August shall be excluded in determining a plant's qualification pursuant to this paragraph; and

(c) A plant which was a pool plant in each of the preceding months of August through March and which was a pool supply plant in each of such months of December through March shall be a pool plant for the months of April through July, unless written application is filed with the market administrator on or before the first day of any such month to be designated a nonpool plant for such month and for each subsequent month through July during which it would not otherwise qualify as a pool plant.

[28 F.R. 5366, May 30, 1963, as amended at 29 F.R. 4147, Mar. 31, 1964]

§ 1049.13. Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and

pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products labeled Grade A in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant nor a producer-handler plant.

[29 F.R. 10883, July 30, 1964]

§ 1049.14. Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk which is:

(a) Received during the month at a pool plant directly from a producer except that received by diversion pursuant to (b) (1) of this section: *Provided*, That milk received at a pool plant by diversion from a plant at which such milk would be fully subject to pricing and pooling under the terms and provisions of another order issued pursuant to the Act shall not be producer milk; or

(b) Diverted by a handler in his capacity as operator of a pool plant or by a cooperative association pursuant to § 1049.8(b) subject to the following conditions:

(1) Diverted during the month from a pool plant to another pool plant(s) for not more days of production of producer milk than is physically received at a pool plant(s) pursuant to paragraph (a) of this section;

(2) Diverted from a pool plant to a nonpool plant(s) at which the handling of milk is not fully subject to the pricing and pooling provisions of another order issued pursuant to the Act on any day during the months of April through August and in any other month, for not more days of production of producer milk than is physically received at a pool plant(s) pursuant to paragraph (a) of this section;

(3) Diverted during the month from a pool plant to a nonpool plant(s) at which the handling of milk is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act for not more days of production of pro-

ducer milk than is received at a pool plant(s) pursuant to paragraph (a) of this section: *Provided*, That milk so diverted shall not be producer milk if, notwithstanding the provisions of this subparagraph, such milk is fully subject to the pricing and pooling provisions of the other order;

(4) Milk diverted for the account of a handler in his capacity as operator of a pool plant shall be deemed to have been received at the pool plant from which diverted; and

(5) Milk diverted for the account of a cooperative association shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant from which diverted.

§ 1049.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), including "fortified" products and "dietary" milk products, concentrated milk, cream or any mixture in fluid form of cream and milk or skim milk (except eggnog, milkshake mix, frozen dessert mix, sour cream, aerated cream products, evaporated and plain or sweetened condensed milk or skim milk, and sterilized products packaged in hermetically sealed containers).

§ 1049.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts during the month of fluid milk products except: (1) Fluid milk products received from pool plants either by transfer or diversion, (2) producer milk, or (3) inventory of fluid milk products on hand at the beginning of the month;

(b) Products, other than fluid milk products, from any source (including those produced at the plant) which are reprocessed or converted into or combined with another product in the plant during the month; and

(c) Any disappearance of nonfluid milk products not otherwise accounted for.

§ 1049.17 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I pursuant to § 1049.41(a)(1) to a retail

or wholesale outlet other than a milk plant.

§ 1049.18 Butter price.

"Butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported for the month by the Department.

MARKET ADMINISTRATOR

§ 1049.25 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

§ 1049.26 Powers.

The market administrator shall have the following powers with respect to this part:

(a) To administer its terms and provisions;

(b) To receive, investigate, and report to the Secretary complaints of violations;

(c) To make rules and regulations to effectuate its terms and provisions; and

(d) To recommend amendments to the Secretary.

§ 1049.27 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 30 days following the date on which he enters upon his duties, or such lesser period, as may be prescribed by the Secretary, execute and deliver to the Secretary a bond effective as of the date on which he enters upon his duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;

(c) Obtain a bond in a reasonable amount, and with satisfactory surety thereon, covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 1049.86 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses except those incurred under § 1049.85 necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate;

(f) Publicly announce at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who, after the date upon which he is required to perform such acts, has not made reports pursuant to §§ 1049.30, 1049.31, and 1049.32, nor payments pursuant to §§ 1049.80, 1049.82, 1049.84, 1049.85, and 1049.86;

(g) Submit his books and records to examination by the Secretary and furnish such information and reports as may be required by the Secretary;

(h) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary.

(i) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;

(j) Publicly announce on or before:

(1) The 6th day of each month, the minimum price for Class I milk pursuant to § 1049.51(a) and the Class I butterfat differential pursuant to § 1049.52(a), both for the current month, and the minimum price for Class II milk pursuant to § 1049.51(b) and the Class II butterfat differential pursuant to § 1049.52(b), both for the preceding month; and

(2) The 14th day after the end of each month, the uniform price pursuant to § 1049.71 and the butterfat differential pursuant to § 1049.72; and

(k) On or before the 14th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members

which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

(l) On or before the 14th day after the end of each month, notify each handler who reported pursuant to § 1049.30 of:

(1) The amount and value of his milk in each class computed pursuant to § 1049.46 and § 1049.70;

(2) The uniform price computed pursuant to § 1049.71; and

(3) The amounts to be paid by such handler pursuant to §§ 1049.82, 1049.85, and 1049.86 and the amount, if any, due such handler pursuant to § 1049.83.

(m) Whenever required for purpose of allocating receipts from other order plants pursuant to § 1049.46(a)(8) and the corresponding step of § 1049.46(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products from an other order plant, the classification to which such receipts are allocated pursuant to § 1049.46 pursuant to such report, and thereafter any change in such allocation required to correct errors disclosed in verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products to an other order plant, the classification to which the skim milk and butterfat in such fluid milk products were allocated by the market administrator of the other order on the basis of the report of the receiving handler; and, as necessary, any changes in such classification arising in the verification of such report. [28 F.R. 5366, May 30, 1963, as amended at 29 F.R. 10883, July 30, 1964]

REPORTS, RECORDS AND FACILITIES

§ 1049.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler for

each of his pool plants and a cooperative association as a handler pursuant to § 1049.8(b), shall report to the market administrator for such month, in the detail and on forms prescribed by the market administrator as follows:

(a) The quantities of skim milk and butterfat contained in:

(1) Receipts of producer milk;

(2) Fluid milk products received by transfer or diversion from pool plants;

(3) Other source milk;

(4) A separate report of producer milk diverted pursuant to § 1049.14: *Provided*, That on or before the day prior to diverting producer milk pursuant to § 1049.14, each handler shall notify the market administrator of his intention to divert such milk, the date or dates of such diversion, and the plant to which such milk is to be diverted; and

(5) Inventories of fluid milk products on hand at the beginning and end of the month;

(b) The utilization of all skim milk and butterfat required to be reported pursuant to this section, including a separate statement of the disposition of Class I milk on routes inside the marketing area; and

(c) Such other information with respect to receipts and utilization of skim milk and butterfat as the market administrator may prescribe.

[28 F.R. 5366, May 30, 1963, as amended at 29 F.R. 10883, July 30, 1964]

§ 1049.31 Other reports.

(a) Each producer-handler shall make reports to the market administrator at such time and in such manner as the market administrator shall request.

(b) Each handler specified in § 1049.8

(c) who operates a partially regulated distributing plant shall report as required of handlers operating pool plants pursuant to § 1049.30, except that receipts in Grade A milk shall be reported in lieu of those in producer milk.

[29 F.R. 10884, July 30, 1964]

§ 1049.32 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler, except a producer-handler and a handler exempt pursuant to § 1049.61, shall report to the market administrator in the detail and on forms prescribed by the market administrator, his producer payroll for that month which shall show for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer and the number of days, if less than the entire month, on which milk was received from such producer;

(3) The average butterfat content of such milk; and

(4) The net amount of such handlers payment, together with the price paid and the amount and nature of any deductions;

(b) Each handler, except one who elects to make payments pursuant to § 1049.62(b), operating a partially regulated distributing plant shall report to the market administrator on or before the 20th day after the end of the month for each dairy farmer from whom milk was received the same information as required from handlers operating pool plants pursuant to paragraph (a) of this section.

[28 F.R. 5366, May 30, 1963, as amended at 29 F.R. 10884, July 30, 1964]

§ 1049.33 Records and facilities.

Each handler shall maintain and make available to the market administrator, during the usual hours of business, such accounts and records of his operations, together with such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipt and utilization of all skim milk and butterfat handled in any form during the month;

(b) The weights and butterfat and other content of all milk and milk products handled during the month;

(c) The pounds of skim milk and butterfat contained in or represented by all milk products in inventory at the beginning and end of each month; and

(d) Payments to producers or dairy farmers, as the case may be, and cooperative associations, including the amount and nature of any deductions and the disbursement of moneys so deducted.

§ 1049.34 Retention of records.

All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the month to which such books and records pertain: *Provided*, That if, within such three-year period, the market administrator notified the handler in writing that the retention of such books and

records is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the market administrator. In either case, the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 1049.40 Skim milk and butterfat to be classified.

Skim milk and butterfat which are required to be reported pursuant to § 1049.30 shall be classified each month by the market administrator pursuant to the provisions of §§ 1049.41 through 1049.46.

§ 1049.41 Classes of utilization.

Subject to the conditions set forth in § 1049.42 through § 1049.46, the classes of utilization shall be as follows:

(a) *Class I milk.* Class I milk shall be all skim milk (including that used to produce concentrated and reconstituted skim milk) and butterfat:

(1) Disposed of from the plant in the form of fluid milk products, other than those classified pursuant to paragraph (b) (2), (3), (4) and (5) of this section, except that fluid milk products which have been fortified by the addition of milk solids shall be Class I only up to the weight of an equal volume of an unmodified fluid milk product of the same nature and butterfat content; and

(2) Not specifically accounted for as Class II milk;

(b) *Class II milk.* Class II milk shall be:

(1) Skim milk and butterfat used to produce any product other than a fluid milk product;

(2) Skim milk and butterfat contained in fluid milk products disposed of for livestock feed or in products which are dumped, if the market administrator has been notified in advance and afforded the opportunity to verify such dumping;

(3) Skim milk and butterfat in fluid milk products delivered in bulk to and used at commercial food establishments devoted exclusively to the manufacture of bakery products, candy, or processed

foods packaged in hermetically sealed containers;

(4) Skim milk contained in that portion of fortified fluid milk products not classified as Class I milk pursuant to paragraph (a) (1) of this section;

(5) Skim milk and butterfat contained in inventory of fluid milk products on hand at the end of the month; and

(6) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1049.42(b) (2) and (3) not to exceed the following:

(i) Two percent of that physically received direct from producers' farms and by diversion from other pool plants; plus

(ii) One and one-half percent of bulk receipts from other pool plants (except bulk cream), bulk receipts from other order plants, exclusive of the quantity for which Class II utilization was requested by the operator of such plant, and the handler, and bulk receipts from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(iii) One and one-half percent of that transferred in bulk to other plants (except bulk cream); and

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1049.42(b) (1).

[28 F.R. 5366, May 30, 1963, as amended at 29 F.R. 10884, July 30, 1964]

§ 1049.42 Shrinkage.

The market administrator shall assign shrinkage to each handler's receipts at each pool plant as follows:

(a) Compute the total shrinkage of skim milk and butterfat; and

(b) Prorate the resulting amounts among (1) skim milk and butterfat in other source milk received in bulk fluid form, exclusive of that specified in § 1049.41(b) (6) (ii); (2) skim milk and butterfat in producer milk (excluding milk diverted to other plants pursuant to § 1049.14); and (3) skim milk and butterfat in bulk fluid receipts including diversions (except bulk cream) from other pool plants, from other order plants and unregulated supply plants, exclusive of the quantities received from other order plants and unregulated supply plants for which Class II utilization was requested by the handlers, in excess of transfers of bulk fluid milk products (except bulk cream) to other plants.

[29 F.R. 10884, July 30, 1964]

§ 1049.43 Responsibility of handlers.

All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

§ 1049.44 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred or diverted to another pool plant subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1049.46(a)(8) and the corresponding step of § 1049.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1049.46(a)(3), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1049.46(a)(7) or (8) and the corresponding steps of § 1049.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant.

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted to a nonpool plant that is neither an other order plant nor a producer-handler plant, located more than 300 miles by the shortest highway distance as determined by the market administrator, from Monument Circle in Indianapolis, Indiana, except that cream so transferred may be classified as Class II if the following conditions are met:

(1) The transferor handler establishes that such cream was transferred without Grade A certification;

(2) The shipment was invoiced accordingly; and:

(3) The market administrator was given sufficient notice to allow him to verify the conditions of shipment;

(d) As Class I milk, if transferred or diverted in bulk to a nonpool plant that is neither an other order plant nor a producer-handler plant, located not more than 300 miles, by the shortest highway distance as determined by the market administrator from Monument Circle in Indianapolis, Indiana, unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph:

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1049.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants:

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in the fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (1) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular source of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred shall be classified as Class II milk; and

(e) As follows, if transferred or diverted to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2) or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified at Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification

shall be in accordance with the provisions of § 1049.41.

[29 F.R. 10884, July 30, 1964]

§ 1049.45 Computation of skim milk and butterfat in each class.

For each month the market administrator shall correct for mathematical and other obvious errors, the reports submitted by each handler pursuant to this part and compute the total pounds of skim milk and butterfat, respectively, in each class at each of the plants of such handler: *Provided*, That if any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk used or disposed of in such product shall be considered to be an amount equivalent to the nonfat milk solids contained in such product plus all the water originally associated with the milk solids.

§ 1049.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1049.45, the market administrator shall determine the classification of producer milk received at each pool plant each month as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class II the pounds of skim milk classified as Class II pursuant to § 1049.41(b) (6);

(2) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk in fluid milk products received in packaged form from other order plants as follows:

(i) From Class II milk, the lesser of the pounds remaining or two percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(3) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of skim milk in each of the following:

(i) Other source milk in a form other than that of a fluid milk product;

(ii) Receipts of fluid milk products for which Grade A certification is not established, or which are from unidentified sources; and

(iii) Receipts of fluid milk products from a producer-handler, as defined under this or any other Federal order;

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II:

(i) The pounds of skim milk in receipts of fluid milk products from unregulated supply plants for which the handler requests Class II utilization, but not in excess of the pounds of skim milk remaining in Class II;

(ii) The pounds of skim milk remaining in receipts of fluid milk products from unregulated supply plants which are in excess of the pounds of skim milk determined as follows:

(a) Multiply the pounds of skim milk remaining in Class I milk (excluding Class I transfers between pool plants of the handler) at all pool plants of the handler by 1.25;

(b) Subtract from the result the sum of the pounds of skim milk at all such plants in producer milk, in receipts from other pool handlers and in receipts in bulk from other order plants; and

(c) (1) Multiply any resulting plus quantity by the percentage that receipts of skim milk in fluid milk products from unregulated supply plants remaining at this plant is of all such receipts remaining at all pool plants of such handler, after any deductions pursuant to subdivision (i) of this subparagraph.

(2) Should such computation result in a quantity to be subtracted from Class II which is in excess of the pounds of skim milk remaining in Class II, the pounds of skim milk in Class II shall be increased to the quantity to be subtracted and the pounds of skim milk in Class I shall be decreased a like amount. In such case the utilization of skim milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(iii) The pounds of skim milk in receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, but not in excess of the pounds of skim milk remaining in Class II milk if Class II utilization was requested by the operator of such plant and the handler;

(5) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class II, the pounds of

skim milk in inventory of fluid milk products on hand at the beginning of the month;

(6) Add to the remaining pounds of skim milk in Class II milk the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(7) (i) Subtract from the pounds of skim milk remaining in each class, pro rata to the total pounds of skim milk remaining in each class in all pool plants of the receiving handler, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants that were not subtracted pursuant to subparagraph (4) (i) or (ii) of this paragraph;

(ii) Should such proration result in the amount to be subtracted from any class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made;

(8) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products in bulk from an other order plant, in excess in each case of similar transfers to the same plant, that were not subtracted pursuant to subparagraph (4) (iii) of this paragraph pursuant to the following procedure:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to whichever of the following represents the higher proportion of Class II milk:

(a) The estimated utilization of skim milk in each class, by all handlers, as announced for the month pursuant to § 1049.27(m); or

(b) The pounds of skim milk in each class remaining at all pool plants of the handler;

(ii) Should proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk to be subtracted from Class II at all pool plants of the handler exceeding the pounds of skim milk remaining in Class II at such

plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which received;

(iii) Except as provided in subdivision (ii) of this subparagraph, should proration pursuant to either subdivision (i) or (ii) of this subparagraph result in the amount to be subtracted from either class exceeding the pounds of skim milk remaining in such class in the pool plant at which such skim milk was received, the pounds of skim milk in such class shall be increased to the amount to be subtracted and the pounds of skim milk in the other class shall be decreased a like amount. In such case the utilization of milk at other pool plant(s) of such handler shall be adjusted in the reverse direction by an identical amount in sequence beginning with the nearest other pool plant of such handler at which such adjustment can be made.

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1049.44(a); and

(10) If the pounds of skim milk remaining in both classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class II. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) Combine the amounts of skim milk and butterfat determined pursuant to paragraphs (a) and (b) of this section into one total for each class and determine the weighted average butterfat content of producer milk in each class.

[29 F.R. 10885, July 30, 1964]

MINIMUM PRICES

§ 1049.50 Basic formula price.

The basic formula price shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota as reported by the United States Department of Agriculture for the month. Such price shall be adjusted to a 3.5 percent butterfat

basis by a butterfat differential rounded to the nearest one-tenth cent computed at 0.12 times the butter price for the month. The basic formula price shall be rounded to the nearest full cent. For the purpose of computing Class I prices from the effective date hereof the basic formula price shall be not less than: \$4.26 for computing Class I prices for December 1966, January and February 1967; \$4.15 for computing Class I prices for March and April 1967; \$4.05 for computing Class I prices for May, June, and July 1967.

[28 F.R. 5366, May 30, 1963, as amended at 31 F.R. 15062, Dec. 1, 1966]

§ 1049.51 Class prices.

Subject to the provisions of §§ 1049.52 and 1049.53, the minimum class prices per hundredweight of milk for the month shall be as follows:

(a) *Class I milk price.* The price for Class I milk shall be the basic formula price for the preceding month plus \$1.27, and plus or minus a "supply-demand adjustment" of not more than 38 cents computed pursuant to subparagraphs (1) and (2) of this paragraph: *Provided*, That beginning with the effective date of this proviso through June 1966 the Class I prices computed pursuant to this section shall be not less than the April 1966 Class I price.

(1) Divide the aggregate pounds of producer milk in Class I (excluding inventory and "overage" and adjusted to eliminate duplications due to interhandler and intermarket plant transfers) under this part and under Part 1047 of this chapter (Fort Wayne, Indiana, order) for the second, third and fourth months preceding by the aggregate pounds of producer milk receipts under such parts for the same months, multiplying the result by 100 and round to the nearest whole number. The result shall be known as the "current utilization percentage";

(2) For each full percentage point that the current utilization percentage is above the applicable maximum standard utilization percentage listed below increase the Class I price differential by two cents; and for each full percentage point that the current utilization percentage is below the applicable minimum standard utilization percentage listed below decrease such differential by two cents.

Month for which pricing is being computed	Preceding months used in computation	Standard utilization percentages	
		Mini- mum	Maxi- mum
Jan.....	Sept., Oct., Nov.....	79	82
Feb.....	Oct., Nov., Dec.....	78	81
Mar.....	Nov., Dec., Jan.....	77	80
Apr.....	Dec., Jan., Feb.....	76	79
May.....	Jan., Feb., Mar.....	76	79
June.....	Feb., Mar., Apr.....	73	76
July.....	Mar., Apr., May.....	69	72
Aug.....	Apr., May, June.....	64	67
Sept.....	May, June, July.....	62	65
Oct.....	June, July, Aug.....	64	67
Nov.....	July, Aug., Sept.....	68	71
Dec.....	Aug., Sept., Oct.....	75	78

(b) *Class II milk price.* The Class II milk price shall be the basic formula price computed pursuant to § 1049.50, except that in no event shall such price exceed the price computed from the sum of subparagraphs (1) and (2) of this paragraph rounded to the nearest cent, plus 10 cents:

(1) From the butter price, subtract three cents, and multiply by 4.2; and

(2) From the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents and multiply by 8.2.

[28 F.R. 5366, May 30, 1963, as amended at 29 F.R. 2927, Mar. 4, 1964, 29 F.R. 18476, Dec. 29, 1964; 31 F.R. 5611, Apr. 9, 1966]

§ 1049.52 Butterfat differentials to handlers.

For milk containing more or less than 3.5 percent butterfat, class prices for the month pursuant to § 1049.51 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation at the appropriate rate, rounded to the nearest one-tenth cent, determined as follows:

(a) *Class I price.* Multiply the butter price for the preceding month by 0.120.

(b) *Class II price.* Multiply the butter price for the month by 0.113.

§ 1049.53 Location differentials to handlers.

(a) For producer milk which is received at a pool plant 70 miles or more from Monument Circle in Indianapolis, Indiana, by the shortest hard-surfaced highway distance as determined by the

market administrator and which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, and for other source milk for which a location adjustment credit is applicable, the price specified in § 1049.51(a) shall be reduced at a rate set forth in the following schedule.

Distance (miles):	Rate per hundredweight (cents)	
70 but less than 80.....		10.0
For each additional 10 miles or fraction thereof.....		1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee plant, in excess of the receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

[29 F.R. 10885, July 30, 1964]

§ 1049.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

APPLICATION OF PROVISIONS

§ 1049.61 Plants subject to other Federal orders.

In the case of a handler in his capacity as the operator of a plant specified in paragraph (a) or (b) of this section the provisions of this part shall not apply, except that such handler shall, with respect to his total receipts and disposition of skim milk and butterfat, make reports to the market administrator at such time and in such manner as the market administrator may require and shall allow verification of such reports by the market administrator:

(a) A distributing plant from which the Secretary determines a greater proportion of fluid milk products is disposed of on routes in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing

plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its Class I disposition on routes is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated by such other order; and

(b) A distributing plant which meets the requirements set forth in § 1049.12 (a) which also meets the requirements of another marketing order on the basis of its distribution in such other marketing area and from which the Secretary determines a greater quantity of milk is disposed of during the month on routes in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless fully regulated under such other marketing order.

§ 1049.62 Obligations of a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay to the market administrator for the producer-settlement fund on or before the 25th day after the end of the month either of the amounts (at the handler's election) calculated pursuant to paragraph (a) or (b) of this section. If the handler fails to report pursuant to §§ 1049.30 and 1049.31(b) the information necessary to compute the amount specified in paragraph (a) of this section, he shall pay the amount computed pursuant to paragraph (b) of this section:

(a) An amount computed as follows:

(1) (i) The obligation that would have been computed pursuant to § 1049.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the weighted average price of the respective order if so allocated to Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1049.70(e) and a credit in the amount specified in § 1049.82(b) (2) with respect

to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

(ii) If the operator of the partially regulated distributing plant so requests, and provides with his reports pursuant to §§ 1049.30 and 1049.31(b) similar reports with respect to the operations of any other nonpool plant which serves as a supply plant for such partially regulated distributing plant by shipments to such plant during the month equivalent to the requirements of § 1049.12(b), with agreement of the operator of such plant that the market administrator may examine the books and records of such plant for purposes of verification of such reports, there will be added the amount of the obligation computed at such nonpool supply plant in the same manner and subject to the same conditions as for the partially regulated distributing plant.

(2) From this obligation there will be deducted the sum of (i) the gross payments made by such handler for Grade A milk received during the month from dairy farmers at such plant and like payments made by the operator of a supply plant(s) included in the computations pursuant to subparagraph (1) of this paragraph, and (ii) any payments to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant.

(b) An amount computed as follows:

(1) Determine the respective amounts of skim milk and butterfat disposed of as Class I milk on routes in the marketing area;

(2) Deduct the respective amounts of skim milk and butterfat received as Class I milk at the partially regulated distributing plant from pool plants and other order plants (except that deducted under a similar provision of another order issued pursuant to the Act);

(3) Combine the amounts of skim milk and butterfat remaining into one total and determine the weighted average butterfat content; and

(4) From the value of such milk at the Class I price applicable at the location of the nonpool plant, subtract its value at the weighted average price applicable at such location or the Class II price, whichever is greater.

[29 F.R. 10886, July 30, 1964]

DETERMINATION OF PRICES TO PRODUCERS

§ 1049.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each pool handler during each month shall be a sum of money computed by the market administrator as follows:

(a) Multiply the quantity of producer milk in each class, as computed pursuant to § 1049.46(c), by the applicable class prices (adjusted pursuant to §§ 1049.52 and 1049.53);

(b) Add the amount obtained from multiplying the pounds of overage deducted from each class pursuant to § 1049.46(a)(10) and the corresponding step of § 1049.46(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.46(a)(5) and the corresponding step of § 1049.46(b);

(d) Add an amount equal to the difference between the value at the Class I price applicable at the pool plant and the value at the Class II price, with respect to skim milk and butterfat in other source milk subtracted from Class I pursuant to § 1049.46(a)(3) and the corresponding step of § 1049.46(b);

(e) Add an amount equal to the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received, with respect to skim milk and butterfat subtracted from Class I pursuant to § 1049.46(a)(7) and the corresponding step of § 1049.46(b).

[29 F.R. 10886, July 30, 1964]

§ 1049.71 Computation of uniform prices.

For each month the market administrator shall compute the uniform price per hundredweight of milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.70 for all handlers who filed the reports prescribed by § 1049.30 for the month and who made the payments pursuant to § 1049.82 for the preceding month;

(b) Add an amount equal to the total value of the location differentials computed pursuant to § 1049.73;

(c) Subtract, if the average butterfat content of the milk specified in para-

graph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent an amount computed by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 1049.72 and multiplying the result by the total hundredweight of such milk;

(d) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.70(e);

(f) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) Subtract from the remainder during each of the months of April through July an amount equal to eight percent of the Class I price multiplied by the total hundredweight of producer milk;

(i) Add during each of the months of September through December one-fourth of the total amount subtracted pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

[29 F.R. 10886, July 30, 1964]

§ 1049.72 Butterfat differentials to producers.

The uniform price for producer milk shall be increased or decreased for each one-tenth of one percent that the butterfat content of such milk is above or below 3.5 percent, respectively, at the

rate determined by multiplying the pounds of butterfat in producer milk allocated to Class I and Class II milk pursuant to § 1049.46 by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of such butterfat and rounding the resultant figure to the nearest one-tenth cent.

§ 1049.73 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received or which is deemed to have been received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1049.53; and

(b) For purposes of computations pursuant to §§ 1049.82 and 1049.83 the weighted average price shall be adjusted at the rates set forth in § 1049.53 applicable at the location of the nonpool plant from which the milk was received. [29 F.R. 10887, July 30, 1964]

PAYMENTS

§ 1049.80 Time and method of payment.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at not less than the Class II price for the preceding month; and

(2) On or before the 18th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price adjusted pursuant to §§ 1049.72, 1049.73, and 1049.85, less any payment made pursuant to subparagraph (1) of this paragraph: *Provided*, That if by such date the handler has not received full payment from the market administrator pursuant to § 1049.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative

association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month;

(c) Each handler shall pay a cooperative association pursuant to § 1049.8(b), on or before the 10th day after the end of the month for milk received from such association at not less than the value of such milk at the applicable class prices; and

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount, or the rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1049.81 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the producer-settlement fund into which he shall deposit all payments and out of which he shall make all payments pursuant to §§ 1049.82, 1049.83 and 1049.84: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1049.82 Payments to the producer-settlement fund.

On or before the 15th day after the end of the month each handler shall pay to the market administrator the amount, if any, by which the total amounts specified in paragraph (a) of this section

exceed the amounts specified in paragraph (b) of this section:

(a) The total of the net pool obligation computed pursuant to § 1049.70 for such handler; and

(b) The sum of

(1) The value of such handler's producer milk at the applicable uniform prices specified in § 1049.80; and

(2) The value at the weighted average price(s) applicable at the location of the plant(s) from which received (not to be less than the value at the Class II price) with respect to other source milk for which a value is computed pursuant to § 1049.70(e).

[29 F.R. 10887, July 30, 1964]

§ 1049.83 Payment's out of the producer-settlement fund.

On or before the 16th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1049.82(b) exceeds the amount computed pursuant to § 1049.82(a): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds become available.

[29 F.R. 10887, July 30, 1964]

§ 1049.84 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1049.85 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1049.80 shall deduct five cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market

administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

§ 1049.86 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month four cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect (a) to producer milk and such handler's own production, (b) other source milk allocated to Class I pursuant to § 1049.46 (a) (3) and § 1049.46(a) (7) and the corresponding steps of § 1049.46(b), and (c) Class I milk disposed of on routes in the marketing area from partially regulated distributing plants that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

[29 F.R. 10887, July 30, 1964]

§ 1049.87 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money.

(a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report on the milk involved in such obligation unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the

handler's last known address, and it shall contain, but need not be limited to, the following:

- (1) The amount of the obligation;
 - (2) The months during which the milk, with respect to which the obligation exists, was received or handled; and
 - (3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.
- (b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representative.
- (c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.
- (d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or setoff by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the Act, a petition claiming such money.

EFFECTIVE TIME, SUSPENSION OR TERMINATION

§ 1049.90 Effective time.

The provisions of this part, or any amendments to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 1049.91 Suspension or termination.

The Secretary shall suspend or terminate any or all of the provisions of this part whenever he finds that it obstructs or does not tend to effectuate the declared policy of the Act. This part shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

§ 1049.92 Continuing power and duty of the market administrator.

(a) If, upon the suspension or termination of any or all of the provisions of this part, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: *Provided*, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

(b) The market administrator or such other person as the Secretary may designate shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all funds or property on hand together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct; and (3) if so directed by the Secretary execute such assignment or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the market administrator or such person pursuant thereto.

§ 1049.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part the market administrator, or such person as the Secretary may designate shall, if so di-

rected by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 1049.100 Separability of provisions.

If any provision of this part, or its application to any person or circumstances, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

§ 1049.101 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

DEFINITIONS

Sec.	Act.
1050.1	Secretary.
1050.2	Department.
1050.3	Person.
1050.4	Cooperative association.
1050.5	Central Illinois marketing area.
1050.6	Producer.
1050.7	Producer-handler.
1050.8	Handler.
1050.9	Distributing plant.
1050.10	Supply plant.
1050.11	Pool plant.
1050.12	Nonpool plant.
1050.13	Producer milk.
1050.14	Other source milk.
1050.15	Fluid milk product.
1050.16	Route.
1050.17	Chicago butter price.
1050.18	Reload point.
1050.19	

MARKET ADMINISTRATOR

1050.20	Designation.
1050.21	Powers.
1050.22	Duties.

REPORTS, RECORDS, AND FACILITIES

Sec.	
1050.30	Reports of receipts and utilization.
1050.31	Other reports.
1050.32	Payroll reports.
1050.33	Reports to cooperative associations.
1050.34	Records and facilities.
1050.35	Retention of records.

CLASSIFICATION

1050.40	Skim milk and butterfat to be classified.
1050.41	Classes of utilization.
1050.42	Responsibility of handlers and reclassification of milk.
1050.43	Transfers and diversions.
1050.44	Computation of skim milk and butterfat in each class.
1050.45	Allocation of skim milk and butterfat classified.
1050.46	Shrinkage.

MINIMUM PRICES

1050.50	Basic formula price.
1050.51	Class prices.
1050.52	Butterfat differentials to handlers.
1050.53	Location adjustments to handlers.
1050.54	Use of equivalent prices.

APPLICATION OF PROVISIONS

1050.60	Producer-handlers.
1050.61	Plants subject to other Federal orders.
1050.62	Obligations of handler operating a partially regulated distributing plant.

DETERMINATION OF UNIFORM PRICE TO PRODUCERS

1050.70	Computation of the net pool obligation of each pool handler.
1050.71	Computation of the uniform price.
1050.72	Notification of handlers.

PAYMENTS

1050.80	Time and method of payment for producer milk.
1050.81	Butter differential to producers.
1050.82	Location differentials to producers and on nonpool milk.
1050.83	Producer-settlement fund.
1050.84	Payments to the producer-settlement fund.
1050.85	Payments out of the producer-settlement fund.
1050.86	Adjustment of accounts.
1050.87	Expense of administration.
1050.88	Marketing services.
1050.89	Adjustment of overdue accounts.

TERMINATION OF OBLIGATIONS

1050.90	Termination of obligations.
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MISCELLANEOUS PROVISIONS

1050.100	Effective time.
1050.101	Suspension or termination.
1050.102	Continuing obligations.
1050.103	Liquidation.